IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12/07/2002

CORAM

THE HON'BLE MR. JUSTICE P.D.DINAKARAN

S.A.NO. 593 OF 1989

1.S.Ayyathurai Thevar(died)
2.Pushpavalli
3.Sundarambal
4.Jeebvanandam
5.Vasugi
6.Selvarathinam
7.Vijayakumari
8.Pandithurai
9.Manjula
Respondents 2 to 9 were impleaded as L.Rs. Of deceeased sole appellant as per the order of this court dated 12.7.2002 in CMP.No. 3901 of 1990 .. Appellants

-Vs-

1.Arulmighu Mathirapureeswearaswami
Devasthanam by its Executive Officer,

2. Balasubramania Thevar
3. S.Narayanaswamy Thevar
4. S.Mangalambal .. Respondents

Second appeal is against the judgment and decree dated 1st September 1987 in A.S.No.163 of 1987 on the file of the District Judge of East Thanjavur at Nagapattinam(O.S.No.232 of 1983 District Munsif, Thiruthuraipoondi).

!For Appellants: Mr.A.Muthukumar

^For Respondents: Mrs.G.Devi

:J U D G M E N T

The appellant in the second appeal is the first defendant in the suit in O.S.No.232 of 1983 on the file of District Munsif, Thiruthuraipoondi laid by the first respondent herein against the appellant herein and respondents 2 to 4 herein, who stood ex-parte in the said suit.

2. The plaintiff/first respondent herein, laid the said suit for declaration that the plaintiff/first resopndent is entitled to have half share in the produce from the suit coconut thope and to fix the same as fair rent, alleging

that the respondents were permitted to raise coconut trees in the suit property to an extent of 8 acres 16 cents in Jambavanodai Vadakku Kadu Vattam, and that they are entitled to have the half share in the usufructs of trees as per the local custom and usage.

3. The defendants/appellants herein resisted the suit on the ground that the civil court has no jurisdiction to fix the fair rent with reference to thopes, quoting the earlier decisions of this Court between the plaintiff/first respondent herein and the other tenants, wherein, this court held that the plaintiff/first respondent herein cannot ask for fixation of fair rent, however permitted the plaintiff/ first respondent herein, to institute a suit for enhancement of rent.

4. Upon the above rival contentions, the learned District Munsif, Thiruthirupoondi framed the following relevant issues:
(i) Whether the suit is maintainable in law?
(ii) Whether the plaintiff is entitled for the relief as prayed for viz. half of the usufructs of the trees?

5. To substantiate their contentions, on behalf of the plaintiff/ first respondent herein, one Rajamanickam was examined as P.W.1, and through him, ten 10 documents were marked as Exs.A1 to A10, to establish the title of the plaintiff/first respondent herein over the suit property. The first defendant/appellant herein examined himself as D.W.1, without any documentary evidence.

6. Considering both oral and documentary evidence, the trial court by decree dated 18.9.1986, even though has held that the plaintiff/first respondent herein is entitled for half of the usufructs as per the local custom and usage, dismissed the suit as not maintainable, holding that the civil court cannot entertain the suit for fixation of fair rent for the coconut trees.

7. On appeal at the instance of the plaintiff/first respondent herein in A.S.No.163 of 1987, the District Judge, East Thanjavur at Nagapattinam, by decree and judgment dated 1.9.1987, reversed the decree and judgment of the lower court dated 18.9.1986 made in O.S.No.232 of 1 983 and set aside the same, holding that the suit laid by the plaintiff/first respondent herein is maintainable in law, and decreed the suit with respect to 1/4th share in the usufructs. Aggrieved by the same, the first defendant/appellant herein has preferred the above second appeal, raising the following substantial question of law:

" Whether the Civil Court has jurisdiction to fix fair rent with regard to the produce of the land in the absence of any provision conferring jurisdiction on it? "

8. The learned counsel appearing for both sides, viz., the first defendant/appellant herein and the plaintiffs/ respondents herein, reiterated

their submissions that were argued before the Courts below, with regard to the maintainability of the suit, as framed and prayed for, and I have given a careful consideration of their submissions.

9.1. In KEDAR LAL V. HARI LAL reported in AIR 1952 Supreme Court 47, the Apex Court has held as follows:
"The court would be slow to throw out a claim on a technicalities of pleading when the substance of thing is there and no prejudice is sought to the other side, however clumsily or inartistically the plaint may be worded. In any event, it is always open to a court to give the plaintiff such general or other reliefs as it deem just to the same extent as if it has been asked for."

9.2. In Annavi Moopan V. Munia Moopan reported in 1969 I M.L.J. Page 379, this court has held as follows:
"Having thus far upheld the right of the landlords to reasonable compensation, so as to avoid unjust enrichment on the part of the tenant, what is the procedure to be adopted to fix such rent which was not the subject matter of agreement of arrangement between the landlords and the tenant? The normal basis is the market rent or fair rent that is being obtained for similar land in similar locality in the vicinity."

9.3. In Union of India Vs.Andhra Bank Ltd. reported in Vol(89) Law Weekly Page 473, a Division Bench of this Court has held as follows:
"The lower court was wrong when it stated that it was open to the defendants to file a petition for fixation of fair rent for, it is admitted before us that at the relevant time, the parties could not approach and get the benefit of the Rent control legislation in the matter of the fixation of fair rent"

10. It is not in dispute that even while disposing of the earlier litigation initiated by the plaintiff/first respondent herein, this Court held that the plaintiff/first respondent herein is not entitled to seek for fixation of rent, but still they are entitled to seek enhancement of rent.

11. In the light of the above decisions, and particularly, since this Court has already held that the plaintiff/first respondent herein is entitled to seek for enhancement of rent based on the local custom and usage, I am obliged to hold that the suit, as framed and prayed for, is maintainable in law.

Answering the substantial question of law in affirmity, this second appeal is dismissed. No costs.

Index:Yes
Website:Yes
VJY/ksv

To
1. The District Judge,East Thanjavur,

at Nagapattinam(with records)
2. The District Munsif, Thirutirupoondi.
Copy to:
The Record Keeper, V.R.section, High Court, Madras-104.